

Application Number 09/992,708
Responsive to final Office Action mailed June 28, 2005

REMARKS

The following remarks are responsive to the Final Office Action dated June 28, 2005. Applicant has not amended the claims. Claims 1-42 are pending, with claims 9-14 and 23-28 withdrawn due to restriction.

Claim Rejections Under 35 U.S.C. §§ 102 and 103

In the Final Office Action, the Examiner rejected claims 1-7, 15-21, 29-30, 32, and 34-41 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,547,730 to Lin et al. (Lin). Additionally, the Examiner rejected claims 8, 22, 31 and 42 under 35 U.S.C. § 103(a) as being unpatentable over Lin in view of U.S. Patent No. 6,148,233 to Owen et al. (Owen). Applicant respectfully traverses these rejections. The applied references fail to disclose each and every feature of the claimed invention, as required for a rejection under 35 U.S.C. § 102(e), and provide no teaching that would have suggested the desirability of modification to include such features, as required for a rejection under 35 U.S.C. § 103(a).

Independent claim 1 requires a method comprising transmitting a USB token packet to a first module of a medical device via an internal system bus, receiving a data packet from the first module via the internal system bus, and transferring the data packet to a second module of the medical device via the internal system bus using a USB protocol. Similarly, independent claim 15 requires a processor-readable medium containing instructions for causing a processor in a medical device to transmit a USB token packet to a first module of the medical device via an internal system bus, receive the data packet from the first module via the internal system bus, and transfer the data packet to a second module of the medical device via the internal system bus using a USB protocol. Additionally, independent claim 29 requires a medical device comprising a system control module, a plurality of functional modules, and an internal system bus coupled to the system control module and to the plurality of functional modules, the internal system bus arranged to transfer data packets between the functional modules and the system control module according to a USB protocol.

In Applicant's previous Amendment, dated April 13, 2005, Applicant argued, *inter alia*, that the previously applied Greeven reference failed to disclose or suggest communication via an

Application Number 09/992,708

Responsive to final Office Action mailed June 28, 2005

internal system bus using a USB protocol, or a device comprising an internal system bus arranged to transfer data packets between the functional modules and the system control module according to a USB protocol, as required by Applicant's independent claims. In the Final Office Action, apparently in response to this argument, the Examiner withdrew the rejections based on Greeven, and instead rejected the claims based on Lin. In light of the Examiner's reliance on Lin, it appears that the Examiner misunderstood Applicant's argument, the Lin disclosure, or both.

Like previously-cited Greeven, Lin fails to disclose or suggest communication via an internal system bus using a USB protocol, or a device comprising an internal system bus arranged to transfer data packets between the functional modules and the system control module according to a USB protocol, as required by Applicant's independent claims. Like Greeven, and in direct contrast to these requirements the independent claims, Lin discloses communication with between separate devices via an external bus 202 (FIG. 2-6). For example, Lin, FIG. 3, shows three ultrasound devices that communicate via an external bus 202. FIGS. 4-6 of Lin are block diagrams illustrating that each of the devices 204, 206, 208 includes an interface to allow communication with the other devices via the external bus 202.

As discussed in Applicant's previous Amendment, in paragraph [0006] of the current application, Applicant acknowledged that, "USB-type interfaces have conventionally been used to connect devices externally . . ."¹ Later within paragraph [0006], Applicant distinguished the current invention from such conventional uses of USB-type interfaces, stating that, "[a]ccording to principles of the invention, however, a USB-type interface connects devices or modules internally within a medical device system."² Applicant submits that Lin, like Greeven, merely teaches the conventional use of USB-type interfaces to communicate with external devices.

Further, with respect to independent claims 1 and 15, nothing within Lin, Owen, U.S. Patent No. 5,734,373 to Rosenberg, or the other cited references suggests transferring data packet received from a first module to a second module of the medical device via an internal system bus using a USB protocol.

¹ Emphasis added.

² Emphasis added.

Application Number 09/992,708
Responsive to final Office Action mailed June 28, 2005

Additionally, with respect to claims 36 and 37, the server 208 described by Lin is a separate device on the external bus 202, not an expansion module of a medical device that allows communication with another device external to the medical device. Moreover, contrary to the Examiner's assertion, there is no teaching within Lin suggesting that the server 208 is a simple device.

Also, with respect to claims 8, 22, 31 and 42, there is nothing within the evidentiary record to suggest that employing the USB transfer protocol of Lin within the defibrillator described by Owen "would amount to mere substitution of one functional equivalent for another that would work equally well in the Owen device." Owen does not even describe a protocol or technique used for communication within the defibrillator described therein. Therefore, it is impossible for the Examiner to state that one of ordinary skill would have considered the USB transfer protocol of Lin to be a functional equivalent to the unspecified protocol or technique. The Examiner has not identified any teaching or suggestion within any of the applied references that would have motivated one of ordinary skill in the art to combine the teachings of Lin and Owen in the manner suggested by the Examiner, or provided one of ordinary skill in the art with a reasonable belief that such a combination would be successful.

It is well established that the Examiner bears the burden of establishing a prima facie case of obviousness.³ In doing so, the Examiner must determine whether the prior art provides a "teaching or suggestion to one of ordinary skill in the art to make the changes that would produce" the claimed invention.⁴ A prima facie case of obviousness is established only when this burden is met.

The Court of Appeals for the Federal Circuit recently addressed the evidentiary standard required to uphold an obviousness rejection.⁵ Specifically, the Federal Circuit stated: "[the] factual question of motivation is material to patentability, and (can) not be resolved on subjective belief and unknown authority."⁶ This finding must be based upon substantial evidence, and not subjective musings or conjecture by the Examiner.⁷ Deficiencies in the evidentiary record cannot

³ *In re Oetiker*, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992).

⁴ *In re Chu*, 36 USPQ2d 1089, 1094 (Fed. Cir. 1995).

⁵ *In re Lee*, 61 USPQ2d 1430 (CAFC 2002).

⁶ *Id.* at 1434.

⁷ *Id.*

Application Number 09/992,708

Responsive to final Office Action mailed June 28, 2005

be cured by general conclusions such as "general knowledge" or "common sense."⁸

Accordingly, the Examiner cannot rely on unsupported, conclusory statements to close holes in the evidentiary record.⁹ Unless the Examiner can establish an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate the USB transfer protocol taught by Lin in the defibrillator taught by Owen, the claims should be allowed.

In sum, Lin fails to disclose each and every feature of Applicant's claims, as required for a rejection under 35 U.S.C. § 102. Furthermore, none of the applied references provides any teaching that would suggest modification of Lin or Owen include such features. For at least these reasons, Applicant requests withdrawal of the rejections of claims 1-8, 15-22 and 29-42.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

8/29/05

SHUMAKER & SIEFFERT, P.A.
8425 Seasons Parkway, Suite 105
St. Paul, Minnesota 55125
Telephone: 651.735.1100
Facsimile: 651.735.1102

By:

Name: Jason D. Kelly
Reg. No.: 54,213

⁸ *Id.*

⁹ *Id.*